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**GOVERNMENT OF INDIA
MINISTRY OF COMMERCE AND INDUSTRY
DEPARTMENT OF COMMERCE
OFFICE OF THE DIRECTOR GENERAL OF FOREIGN TRADE
Udyog Bhawan, New Delhi-110011**

F. No. 18/09/2018-19/ECA-I/312

Date of Order January, 2019

Date of Dispatch 17th January, 2019

Name of Appellant : M/s Mithila Drugs Pvt. Ltd.,
F-70, Road No. 2, Mewar Industrial Area,
Udaipur,
Rajasthan-313003.

Order Appealed against : Order-in-Appeal No. 03 / 16 / 144 / 00005 / AM.17 /
231 dated 21.08.2017 passed by the Addl. DGFT,
Mumbai.

Order-in-Review passed by : Shri Alok Vardhan Chaturvedi, Director General of
Foreign Trade

Order-in-Review

M/s Mithila Drugs Pvt. Ltd., Udaipur has filed Review Petition under Section 16 of FTDR Act, 1992, as amended, against Order-in-Appeal No. 03/16/144/00005/AM.17/231 dated 21.08.2017 passed by Additional Director General of Foreign Trade, Mumbai.

Facts of the case:

2. M/s Mithila Drugs Pvt. Ltd., Udaipur obtained an Advance Authorization No. 0310555105 dated 13.01.2010 from RA, Mumbai for import of bulk drugs for a CIF value of Rs. 78,32,509/- (US\$ 1,70,829) subject to fulfillment of export obligation for FOB value of Rs. 83,44,700/- (US\$ 1,82,000).

2.1 Even after the expiry of EOP, no document towards discharge of export obligation was submitted by the firm. Hence a Demand Notice dated 10.04.2013 was issued.

2.2 When no reply to Demand Notice was received, Refusal Order dated 03.07.2013 was issued and name of the firm was put under Denied Entity List.

2.3 The export documents towards discharge of export obligation were submitted in reply to the Show Cause Notice. But not all the original Shipping Bills were submitted. The authorization had been issued with the conditions of Policy Circular No. 9 dated 30.06.2003 as per which export obligation had to be completed within 12 months from the date of first export. There was a shortfall in export and import was made in excess. Therefore, the firm was required to pay duty along with interest on excess import on account of unfulfilled export obligation within the prescribed period. The case also required compliance of Policy Circular No. 18 dated 30.10.2007. These deficiencies were communicated to the firm vide Deficiency Letter dated 18.06.2014 and then again on 08.09.2014.

2.4 There had been no compliance on the above mentioned deficiencies. Payment of duty along with interest on excess import was also not made.



2.5 Hence, the Adjudicating Authority, in exercise of powers conferred upon him under Section 13 of the Foreign Trade (Development and Regulation) Act, 1992, as amended, passed Order-in-Original No. 03/01/002/00165/AM15 dated 11.02.2016 imposing a penalty of Rs. 78,32,000/- (Rupees Seventy Eight Lakh Thirty Two Thousand only). The firm was also directed to pay interest and duty on excess import made under the Licence.

3. Aggrieved by the Order-in-Original No. 03/01/002/00165/AM15 dated 11.02.2016, the appellant filed appeal on 11.03.2016 under Section 15 of the Foreign Trade (Development and Regulation) Act, 1992, as amended, before the Additional Director General of Foreign Trade (Appellate Authority), Mumbai.

3.1 An opportunity of Personal Hearing was granted on 07.03.2017 by the Appellate Authority. Shri Sanjay Kumar Jha, Director and Shri Pramod Kumar Jha, Director appeared before the Appellate Authority.

3.2 They informed that since the manufacturing activities was completely stopped due to Directors' disputes the pending export obligations could not be fulfilled and under every authorizations there was a shortfall and demand of duty was raised by DGFT. The financial condition of the company was not good; therefore, they could not pay the custom duty and interest on excess imports. They required some time to revive the company to streamline all the activities. They had gradually commenced their production. Hence, as and when the funds would be available they would try to clear all liabilities and pay custom duty and interest against all demand for closing the authorizations. They had requested to take lenient view and waive the penalty of Rs. 78,32,000/-.

3.3 After going through the adjudication order as well as the documents available on record, the Appellate Authority found that the appellant had not paid any duty towards excess imports made. They had also not furnished any documentary evidence in support of their statement made in appeal. They did not establish and pin-point relevant provision to consider their request.

3.4 The Appellate Authority did not find any reason to interfere with the Order-in-Original passed by the Adjudicating Authority. Hence, in exercise of the powers vested in her under Section 15 of the Foreign Trade (Development and Regulation) Act, 1992, as amended, dismissed the appeal vide Order-in-Appeal No. 03/16/144/00005/AM.17/231 dated 21.08.2017.

4. Aggrieved by the decision of Appellate Authority, the applicant has filed the present Review Petition under Section 16 of the Foreign Trade (Development and Regulation) Act, 1992, as amended, stating that:

4.1 The appeal filed by the petitioner has been dismissed without considering the submissions made by them.

4.2 While passing the impugned order, the Appellate Authority did not consider the submissions made by the petitioner despite the fact that detailed submissions were made by the petitioner and the impugned order was passed without appreciating the documents.

4.3 The Appellate Authority completely failed to understand the compelling circumstances under which the petitioner failed to perform its export obligations. The order is completely silent on the efforts made by the petitioner for surrendering of advance authorizations.

4.4 The Appellate Authority completely ignored the statutory documents filed in support of the contentions raised that despite the strenuous efforts made by the petitioner to submit the Advance Authorizations back to the authority, no assistance was given either by the Court appointed Chairman or by the other group of shareholders who were illegally withholding the Advance Authorizations and therefore, could not be surrendered.

4.5 Mithila Drugs Private Limited is a private limited company and during the relevant point of time the company was having shareholding as well directorship which was equally distributed among two groups i.e. Jha Group and Nachane Group.

4.6 The Nachane Group was handling the commercial activities related to export / domestic sales and DGFT related issues. Jha Group was handling only the manufacturing activities of the company.

4.7 The company has been obtaining Advance Authorizations and has been fulfilling the export obligations and never committed any default until the dispute took place between the two groups.

4.8 The company functioned smoothly till October, 2010 and thereafter on account of the malafide conduct on the part of the Nachane Group, disputes were created between the directors and shareholders of the company. However, when they could not succeed in their ulterior motive, the Nachane Group of shareholders filed the company petition in the Company Law Board (CLB), New Delhi on 19.05.2011.

4.9 The CLB vide its order dated 19.05.2011 directed the company to arrange the board meeting in the presence of CLB appointed observer Shri Rajpal Yadav and accordingly meeting was held on 16.06.2011. Both the group exchanged their agenda for the board meeting. The Jha Group has raised the issue of Advance Authorizations and other company related matters. The Jha Group was not having much knowledge about the Advance Authorizations since the Nachane Group was handling commercial activities. Nachane Group took the responsibility to look after all the pending Authorizations and had retained all the original Authorizations / documents of the company but took no action for closure.

4.10 The company also informed the Central Excise Authority vide letter dated 27.01.2012 that its production is temporarily suspended.

4.11 The company has repeatedly asked the Nachane Group to send the documents as per list of Auditors (M/s Deopura & Associates) by letter dated 30.03.2012 but they never responded and therefore, the company could not finalize the books of account of company from April, 2010.

4.12 On 27.04.2012 the CLB appointed Shri Narendra Kumar Jain as the Chairman of the company for smooth functioning of the company and for getting statutory return filed without further delay.

4.13 The Chairman called the board meeting on 09.05.2012 and both the groups submitted their agenda. The Chairman being hand in gloves with the Nachane Group was not in favour of the company running the factory for extraneous reasons. Despite the same, the Jha Group raised the issues related to Advance Authorization-etc. The Chairman, however, refused to discuss the Jha Group agenda.

4.14 The Chairman went a step further in its ulterior motive and instructed The State Bank of Bikaner & Jaipur (SBBJ) vide letter dated 10.05.2012 to stop the transaction of the company's accounts.

4.15 Stopping of company account resulted into disconnection of RSEB, telephone and non-payment of salaries of employees. The Chairman as evident was never concerned with the interest of the company and only favoured the interest of the Nachane Group.

4.16 Ultimately Jha Group had no option but to move the petition in the Company Law Board on 26.06.2012 for removal of Chairman and others. The petition was decided vide order dated 16.12.2013 whereby the Chairman Narendra Kumar Jain, was directed to work with more cohesiveness and in a transparent manner.

4.17 The Chairman had never acted after the order was passed on 16.12.2013 and remained silent until the case was withdrawn on 18.02.2016.

4.18 Time and again the company has informed the Chairman and Nachane Group about the pending Authorization, Demand Notices, Show Cause Notices and personal hearings but neither the Chairman nor Nachane Group ever responded.

4.19 After the continuous efforts by the present management of the company with the Nachane Group, the Authorizations were finally decided to be submitted, however, bank account of the company were freeze and the matter was still pending before the Company Law Board, New Delhi and management of the company was still working under the direction of the Chairman appointed by the Company Law Board. Therefore, the matter relating to Authorization could not be processed further in view of the fact that the Jha Group was not able either to operate the account or to take the decision with regard to redemption. It may further be noted that order with regard to the penalty was issued by the Adjudicating Authority on 11.02.2016 when the matter was still pending in the CLB. Later on 18.02.2016 the petition was withdrawn by the Nachane Group and only thereafter complete management was handed over to the Jha Group. Thereafter, the Jha Group took steps for redemption of the Authorization.

4.20 Since the manufacturing activities was completely stopped from November, 2011 as the matter was in the Company Law Board, New Delhi from May, 2011 and the Chairman was appointed by the CLB, the pending export obligation could not be fulfilled and in most of the Authorizations there was a shortfall and demand of duty was raised by RA.

4.21 The company is in the process of putting all our efforts to commence their production, stream line and normalize all the issues related to Government Authorities.

4.22 For the above reasons, the petitioner has requested to allow the Review Petition and set aside the impugned order dated 21.08.2017 passed by the Appellate Authority and to stay on the operation of the impugned order and stay recovery thereof in view of the Section 16(3) of the Foreign Trade (Development and Regulation) Act, 1992.

5. The applicant was granted Personal Hearing on 09.08.2018 at 3.30 PM to be heard by the Reviewing Authority. Shri Sanjay Kumar Jha, Director and Shri Amol Vyas, Advocate appeared before the undersigned on the given date on behalf of the applicant and explained their case.

5.1 I have gone through the facts and records carefully. It is observed that the demand notice was issued on 10.04.2013 and Order-in-Original was passed on 11.02.2016. The firm was given ample opportunity to get their case regularized by payment of duty plus interest for the unfulfilled export obligation. But the Appellant failed to do so. The Appellant has stated that they could not pay duty plus interest due to their internal dispute which can not be accepted as a valid ground for a such a long delay in payment of duty plus interest for getting their case closed. The Appellate Order dated 21.08.2017 seems to be in order. I find no reason to interfere with the Appellate Order.

6. I, therefore, in exercise of powers vested in me under Section 16 of FTDR Act, 1992, as amended, pass the following order:

Order

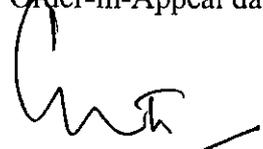
F. No. 18/09/2018-19/ECA-I | 313

Date of Order

January, 2019

17.01.2019

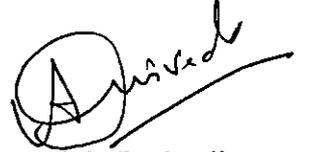
The Review Appeal is dismissed. Order-in-Original dated 11.02.2016 and Order-in-Appeal dated 21.08.2017 are upheld.



Alok V. Chaturvedi
Director General of Foreign Trade

To

1. M/s Mithila Drugs Pvt. Ltd.,
F-70, Road No. 2, Mewar Industrial Area,
Udaipur,
Rajasthan-313003.
2. The Addl. Director General of Foreign Trade,
CGO Complex, Nishtha Bhawan,
New Marine Lines, Churchgate,
Mumbai-400020.



Alok Dwivedi
Deputy Director General of Foreign Trade